

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

RECEIVED

JUN 25 2001

In the Matter of

DOCKET FILE COPY ORIGINAL

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
1998 Biennial Regulatory Review - Streamlined)	CC Docket No. 98-171
Contributor Reporting Requirements Associated with)	
Administration of Telecommunications Relay Service,)	
North American Numbering Plan, Local Number)	
Portability, and Universal Service Support Mechanisms)	
Telecommunications Services for Individuals with)	CC Docket No. 90-571
Hearing and Speech Disabilities, and the Americans with)	
Disabilities Act of 1990)	
Administration of the North American Numbering Plan)	CC Docket No. 92-237
and North American Numbering Plan Cost Recovery)	NSD File No. L-00-72
Contribution Factor and Fund Size)	
Number Resource Optimization)	CC Docket No. 99-200
Telephone Number Portability)	CC Docket No. 95-116

To: The Commission

**COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.**

Respectfully submitted,

**AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.**

By: 

Alan R. Shark, President
1150 18th Street, N.W., Suite 250
Washington, D.C. 20036
(202) 331-7773

Of Counsel:
Elizabeth R. Sachs, Esq.
Lukas, Nace, Gutierrez & Sachs
1111 19th Street, N.W., Suite 1200
Washington, D.C. 20036
(202) 857-3500

June 25, 2001

The American Mobile Telecommunications Association, Inc. (“AMTA” or “Association”), in accordance with Section 1.415 of the Federal Communications Commission (“FCC” or “Commission”) Rules and Regulations, respectfully submits its Comments in the above-entitled proceeding.¹ The Notice requests comment on whether and how to streamline and reform the methodology by which the Commission assesses carrier contributions to the universal service fund. Specifically, the FCC describes its objective as follows:

...to ensure that providers of interstate telecommunications services continue to “contribute, on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service.”²

AMTA supports the FCC’s stated intent in revisiting the universal service methodology. As described below, the Association believes retention of the current *de minimis* exception and the “safe harbor” percentage applicable to the Specialized Mobile Radio (“SMR”) service are consistent with the Commission’s goals and with the public interest.

I. INTRODUCTION

1. AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry. The Association’s members include trunked and conventional 800 MHz and 900 MHz SMR operators, licensees of wide-area SMR systems, and commercial licensees in the 220 MHz and 450-512 MHz bands. Because all AMTA members provide commercial telecommunications service, whether as interconnected Commercial Mobile Radio Service (CMRS) or non-interconnected Private Mobile Radio Service (PMRS) operators, they

¹*Notice of Proposed Rulemaking*, CC Docket No. 9-45, FCC 01-145 (rel. May 8, 2001) (“NPR” or “Notice”).

²Notice at ¶ 3.

all have been determined by the FCC to be “telecommunications carriers” pursuant to Section 254(d) of the Communications Act of 1934, as amended (“Act”), and, therefore, subject to the universal service payment obligation to the extent they are engaged in the provision of interstate telecommunications services.³ All members that provide even entirely non-interconnected dispatch service from a facility that permits coverage across state lines, as well as those with any interconnection capability, no matter how limited, are subject to the federal universal service support mechanism. Thus, AMTA and its members have a significant interest in the outcome of this proceeding.

II. THE NOTICE IDENTIFIES NO CHANGED CIRCUMSTANCES THAT WOULD WARRANT ELIMINATION OF THE *DE MINIMIS* EXCEPTION OR A RECALCULATION OF THE SMR SAFE HARBOR PERCENTAGE

2. The genesis of the instant NPR is the Commission’s desire to ensure that changed circumstances in the interstate telecommunications services market do not result in the skewed application of its universal service contribution methodology. The Notice identifies various factors as indicative of these changed market dynamics:

Since the Commission’s initial implementation of section 254 of the Act in 1997, we have seen many significant developments in the interstate telecommunications marketplace. We have witnessed the entry of new providers into the long distance market, including Regional Bell Operating Companies (RBOCs)....We also are seeing certain wireline interexchange carriers suffer declining revenues in light of growing competition. Growth in the wireless telecommunications sector, as well as the advent of Internet Protocol (IP) telephony, has changed the dynamics of the interstate telecommunications markets. Furthermore, many carriers are bundling services together in creative ways, such as offering flat-rate packages that include

³47 U.S.C. § 254(d).

both interstate and intrastate telecommunications and non-telecommunications products and services.⁴

3. AMTA does not disagree that the above-identified market shifts are occurring, or that they may not warrant a further examination of the current universal service contribution methodology. However, the Association urges the Commission not to draw overly broad generalizations from these market trends and assume they are affecting all segments of the “interstate telecommunications carrier” industry, an industry Congress and the FCC have defined so broadly as to encompass a multiplicity of disparate service offerings . As detailed extensively in AMTA’s previous filings in respect to universal service issues, its members serve a discrete niche of that multi-faceted market. They have remained relatively untouched by the cited trends, except to the extent that they have further limited their interconnection offerings in contradiction to any assumption that their universal service reporting obligations should be expanded or their contributions increased.

A. The *De Minimis* Exception Properly Ameliorates What Otherwise Would be an Unproductive and Burdensome Obligation on this Industry Segment

4. The current *de minimis* exception exempts from contribution those providers whose annual universal service obligation is expected to be less than \$10,000.⁵ Entities expecting to fall under the exemption are directed to complete and retain the Worksheet wherein the necessary calculations are performed, but are not required to submit that information or to make a contribution to the fund. The vast majority of AMTA’s members who are considered to be providing interstate

⁴Notice at ¶ 3.

⁵*See*, 47 C.F.R. § 54.708.

service, either because their radio coverage crosses a state line⁶ or because they offer interconnection with the Public Switched Network (PSN), have interstate and international revenues⁷ that permit them to utilize the exception, a welcome relief from an obligation to which they were subject prior to adoption of the exception provision.

5. As indicated in the Notice, the exemption was implemented to ensure that the costs of complying with contributing to the universal service mechanisms did not exceed the contribution amounts.⁸ However, the NPR posits:

To the extent that the administrative costs of contributing to the universal service mechanisms have declined over time, we seek comment on whether the *de minimis* exemption should be modified or eliminated.⁹

It is unclear from this statement whether the Commission has determined that those costs have, in fact, declined, although the Notice cites no supporting documentation to that effect, or whether it is intended as a query about the current administrative status of meeting this obligation.

⁶AMTA must continue to question whether the Commission has interpreted Congressional intention correctly in this regard. It is not evident from the record that Congress understood its definition would sweep in purely dispatch telecommunications carriers, those who are not interconnected with the PSN, access to which is the objective of universal service funding, on the entirely random basis that a particular operator's transmitter is located on a tower or building which provide radio coverage across a state line. The result is that one of two otherwise identical dispatch systems separated by only a half-mile might have a universal service obligation if its service contour crossed a state boundary while coverage from the neighboring system fell just shy of the border.

⁷AMTA believes that only a minuscule percentage of its members derive any revenues from international traffic.

⁸Prior to adoption of the *de minimis* test, it was not unusual for an AMTA member literally to spend hours calculating its obligation only to find that the payment would be less than \$10, or even less than \$1.

⁹Notice at ¶ 31.

6. The Association is unaware of any record or anecdotal evidence indicating that the administrative costs associated with contributing have declined. As explained in its earlier filings in respect to this issue, most of the Association's members operate businesses that fall substantially below the Small Business Administration ("SBA") or FCC definitions of small business revenue caps. They typically have five or fewer employees; the owner retains responsibility for all matters that require access to company revenues and business projections. Thus, contrary to the assumption in the NPR, the owner's own time, as well as whatever outside assistance he or she requires, can easily cost substantially more than the resulting contribution for these types of systems.

7. The *de minimis* exception was adopted after the Commission and the industry had experience with the universal service mechanisms and the obligations that flow from them. It was adopted based on a thoughtful, balanced assessment of the costs and benefits of this program and should not be abandoned without clear, convincing evidence that the supporting rationale no longer exists. AMTA is unaware of any such documentation and urges the FCC to retain the exception which helps reduce unnecessary regulatory burdens on these very small businesses.

B. The Commission Should Retain the Current Revenue-Based Safe Harbor Calculation for SMR Systems.

8. The current universal service contribution methodology uses a carrier's interstate and international revenues to gauge its contribution obligation. The Notice questions whether the FCC should retain revenues as the service measure or switch to an alternative, such as a flat per-line or per-account method.¹⁰ In conjunction with this inquiry, the Commission requests comment on

¹⁰The Notice also questions whether the methodology should shift from calculations based on revenues collected rather than billed. Notice at ¶ 22. AMTA believes it would be more equitable to derive the contribution from collected revenues, but will accept either approach if the Commission

retaining the “interim” safe harbor percentages if the assessment methodology remains tied to revenues. The NPR also questions specifically:

...whether all SMR providers should be subject to the same safe harbor percentage as cellular and broadband PCS providers.¹¹

9. As an initial matter, AMTA notes that the Commission’s consideration of switching to a per-line or per-account charge supports the Association’s conviction that dispatch-only systems should not be subject to universal service contributions at all. Unlike all other contributor categories, these systems have no PSN interconnection; thus, neither they nor their customers use “lines”. For that reason, AMTA supports this proposal. However, if the FCC retains a revenue-based contribution methodology, the Association also strongly urges it to make the safe harbor provisions permanent and to retain a separate category for traditional SMR systems.

10. The record in the FCC’s exploration of universal service issues explains clearly the importance of the safe harbor provisions to AMTA members. The Association’s Reply Comments in response to the 1998 Further Notice of Proposed Rulemaking¹² provided ample support for the Commission’s decisions to adopt safe harbor provisions and to distinguish traditional SMR systems from cellular and PCS operations for that purpose.¹³

11. AMTA has explained to the Commission on a number of occasions the difficulty, indeed impossibility, for its typical member in attempting to differentiate interstate from intrastate

otherwise adopts the Association’s recommendations herein.

¹¹Id. at ¶ 24.

¹²*Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 96-45, FCC 98-272 (rel. Oct. 26, 1998) (“Further Notice”).

¹³AMTA Reply Comments filed January 25, 1999 (“Reply Comments”).

service revenues. Most SMR systems, in particular dispatch only-systems, have never distinguished revenues on that basis and have no practical ability to do so. The system operator has no way of knowing whether a particular customer radio unit is being used on the intra- or interstate side of a state boundary, a fact that, of course, may change many times during the course of the unit's travel throughout the coverage area. It is not possible on site-specific dispatch systems to identify the location of each unit each time it uses the system, information that is of no import whatsoever to the operator or its customers, except to the extent it was necessary to calculate potential universal service contributions.

12. It was for this reason that AMTA fully supported the FCC's proposal to adopt a safe harbor for purposes of determining the percentage of revenue subject to contribution calculations. The Association coordinated with the Commission in surveying the AMTA members in respect to this issue and providing the results to the FCC for consideration. As noted in the Reply Comments, that survey was cited extensively in the Further Notice which stated that, with the exception of Nextel Communications, Inc's digital iDEN system, the systems of AMTA's members generated very low levels of interstate traffic.¹⁴

13. That fact has not changed. Indeed, as the consumer-oriented wireless systems such as cellular, PCS and digital SMR¹⁵ expand coverage and service offerings, fewer and fewer

¹⁴Further Notice at ¶¶ 21-2.

¹⁵In its Reply Comments, AMTA recommended that the delineation between types of SMR systems for safe harbor purposes track the now commonly used "covered carrier" definition rather than an analog/digital distinction. It explained that some traditional, single-site SMR systems should be expected to convert to digital technology over time and that the distinguishing factors between such systems and PCS, cellular and what often is referred to as ESMR, are captured accurately in the covered carrier language.

traditional SMR systems offer any type of PSN interconnection. The gap between those services and the non-iDEN SMR industry has broadened, not narrowed. The latter have focused even more specifically on serving the dispatch communications requirements of the business and public safety community, the vast majority of which constitute intrastate service, while the former continue a consolidation and expansion pattern that typically expands their geographic scope, and presumably the amount of interstate traffic carried on their systems. The Notice offers no insight into why it might eliminate the current distinction, and AMTA strongly opposes any decision to do so as entirely contrary to the facts and to the NPR's avowed objective of ensuring "equitable, non-discriminatory" contribution obligations.

III. CONCLUSION

14. For the reasons described herein, AMTA urges the FCC to retain the *de minimis* exception and to adopt permanent SMR safe harbor revenue percentages consistent with those it has been using as an interim standard.

CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this June 25, 2001, caused to be mailed, first-class, postage prepaid, a copy of the foregoing

Comments to the following:

Chairman Michael K. Powell
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20024

Commissioner Gloria Tristani
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20024

Commissioner Kathleen Q. Abernathy
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20024

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20024

Thomas J. Sugrue, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., S.W., Rm. 3-C207
Washington, D.C. 20554

Gerald P. Vaughan, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., S.W., Rm. 3-C207
Washington, D.C. 20554

James D. Schlichting, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., S.W., Rm. 3-C207
Washington, D.C. 20554

Kathleen O'Brien-Ham, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., S.W., Rm. 3-C207
Washington, D.C. 20554

William Kunze, Chief
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., S.W., Rm. 4-C207
Washington, D.C. 20554

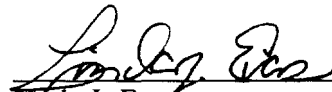
Paul D'Ari, Chief
Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th St., S.W., Rm. 4A-207
Washington, D.C. 20554

Judy M. Boley
Office of Management and Budget
Federal Communications Commission
445 12th Street, S.W., Rm. 1-C804
Washington, D.C. 20554

Edward Springer
Desk Officer
Office of Management and Budget
Federal Communications Commission
10236 NEOB
725 17th Street, N.W.
Washington, D.C. 20503

Sheryl Todd
Accounting Policy Division
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

International Transcription Services, Inc.
1231 20th Street, N.W.
Washington, D.C. 20037


Linda J. Evans